United States Department of Labor Employees' Compensation Appeals Board

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C.H., Appellant)	
and)	Docket No. 12-69 Issued: December 19, 2011
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Edmonton, Alberta, Canada, Employer)	issaca. Seconder 19, 2011
Appearances: Appellant, pro se Office of Solicitor, for the Director	,	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

By letter received on October 10, 2011, appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) May 19, 2011 nonmerit decision denying his request for an oral hearing and the September 29, 2011 nonmerit decision denying his request for reconsideration. The appeal was docketed as No. 12-69. After considering the evidence of record, the Board finds this case is not in posture for a decision.

The present appeal involves appellant's November 18, 2010 occupational disease claim (No. xxxxxx576), in which he alleged that he developed severe sinus headaches, breathing difficulties and nausea due to employment-related exposure to jet and diesel fumes, dust and toxins. Under the same file number, appellant also submitted CA-2 forms dated November 20 and December 23, 2010 and January 15, 2011 alleging that he developed chronic sinusitis and allegoric bilateral rhinitis due to employment-related exposure to toxic fumes. In each claim form, he asked OWCP to refer to his prior claims in File Nos. xxxxxxx846, xxxxxxx995 and xxxxxx576 for similar conditions due to the same occupational exposure. Appellant submitted medical evidence in support of his claim and continued to refer OWCP to his prior case files for additional medical evidence.

In a decision dated March 1, 2011, OWCP denied appellant's claim on the grounds that he had not established a causal relationship between his claimed sinus condition and factors of employment. On May 18, 2011 it denied his request for an oral hearing as untimely. By decision dated September 29, 2011, OWCP denied appellant's request for reconsideration, finding that the evidence presented did not warrant merit review.

The record indicates that appellant has filed similar occupational disease claims based on employment-related exposure to toxic fumes, including: a December 21, 2008 claim (No. xxxxxx995), which was accepted for acute episodic allergic bilateral conjunctivitis/rhinitis; a November 27, 2007 claim (No. xxxxxx846), which appellant states was accepted by OWCP; a pending May 18, 2011 occupational disease claim (No. xxxxxx270), in which he alleged that he developed occupational asthma and allergic rhinitis due to employment-related exposure to jet and diesel fumes, dust and toxins. The record in the instant case, however, does not contain any evidence relating to the development of the prior claims.

In its September 29, 2011 decision, OWCP denied appellant's reconsideration request, without addressing his contention that the record in previously filed cases would establish a causal relationship between his claimed medical condition and established work-related exposure to toxic fumes. As the allegations contained in File Nos. xxxxxxx995, xxxxxx846 and xxxxxx270 are substantially the same as those contained in the instant case (File No. xxxxxxx576), the medical evidence contained in those files will necessarily bear directly on appellant's claim for compensation in File No. xxxxxxx576. Because it is essential for the Board to review the medical evidence contained in file numbers xxxxxxx995, xxxxxxx846 and xxxxxxx270 in order to render a full and fair adjudication of the present appeal, this case will be remanded for OWCP to consolidate case file numbers xxxxxxx995, xxxxxxx846, xxxxxxx270 and xxxxxx576. Following reconstruction of the record, OWCP shall reconsider appellant's request for merit review based on new evidence available in the consolidated case record and shall issue an appropriate decision.¹

¹ In File No. xxxxxx270, appellant appealed a July 29, 2011 merit decision denying his occupational disease claim.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 29, 2011 decision be set aside and the case remanded for further development consistent with this order.²

Issued: December 19, 2011

Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

² In light of the Board's ruling, it is unnecessary to address OWCP's May 19, 2011 decision denying appellant's hearing request. The Board notes that appellant requested oral argument before the Board. Pursuant to 20 C.F.R. § 501.5(a), oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In light of the Board's ruling, oral argument is not appropriate in this case. Therefore, appellant's request for oral argument is denied.